

DEPARTMENT OF THE ARMY PERMIT

Permittee: Glen R. DeWillie  
Lieutenant Colonel, Corps of Engineers  
District Commander  
On Behalf of the General Public

Permit No.: 81-000-1

Processing No.: «ACTID»

Effective Date: September 4, 2001

Expiration Date: September 4, 2006

Affirmation Date: «AFFIRM\_RP»

Issuing Office: U.S. Army Engineer District, Buffalo  
1776 Niagara Street  
Buffalo, New York, 14207-3199

**IMPORTANT:** PRIOR TO COMMENCING THE ACTIVITY AUTHORIZED BY THIS PERMIT OR DIRECTING A CONTRACTOR TO PERFORM SUCH ACTIVITY ON YOUR BEHALF, BE SURE THAT ALL PARTIES READ, UNDERSTAND AND COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT.

NONCOMPLIANCE WITH ANY OF THE TERMS OR CONDITIONS OF THIS PERMIT MAY RESULT IN AN ORDER TO REMOVE THE ACTIVITY; CIVIL AND/OR CRIMINAL PENALTIES OR BOTH.

**AUTHORITIES:** You have been authorized to undertake the activity described below pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

and

Section 404 of the Clean Water Act (33 U.S.C. 1344)

**AUTHORIZED ACTIVITY:** Minor recreational dredging activities, including discharges of dredged material, other than incidental fallback, associated with in-water excavation activities, that have received written affirmation of permit applicability from the U.S. Army Engineer District, Buffalo.

**LOCATION OF THE AUTHORIZED ACTIVITY:** Waters of the United States that are located

within the State of New York and subject to regulation by the U.S. Army Engineer District, Buffalo.

The general public is hereby authorized by the Secretary of the Army to perform the work authorized by this permit provided the following general and special conditions are fully complied with.

NOTE: The term "you" and its derivatives, as used in this permit, mean the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer. The term "activity" as used in this permit includes all structures and work authorized by this permit.

GENERAL CONDITIONS:

1. The work authorized under this regional permit must be completed prior to the expiration date noted on the first page of this authorization. In the event that the affirmation date is less than twelve months prior to the expiration date, the regional permit will remain valid for a period of twelve months from the affirmation date. In no case shall authorization exceed twelve months beyond the expiration date. If you find that you need more time to begin and/or complete the authorized activity, submit your written request for a time extension to this office at least three months before the respective date(s).
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, unless you make a good faith transfer to a third party in accordance with General Condition No. 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you may be required to remove the structure(s) and restore the site to its original pre-project conditions.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
6. The permittee understands and agrees that, if future operations by the United States

require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

7. This office reserves the right to use this regional permit in combination with any existing or future nationwide, regional or individual permit or any letter of permission.

SPECIAL CONDITIONS:

1. Before beginning the work authorized herein or directing a contractor to perform such work on your behalf, be sure that all parties read, understand and comply with the terms and conditions of this permit.
2. Dredging must be for one or a combination of any of the following purposes:
  - a. Removal of obstructions such as debris, boulders, shoals, concrete slabs, cribs or unserviceable structures in order to improve recreational usage of a waterbody.
  - b. To provide sufficient depths for ingress or egress of a recreational craft to the applicant's mooring facility including floating plant which may be necessary to accomplish the dredging.
  - c. To provide mooring for recreational craft or other vessels which will promote recreational usage of a waterbody.
  - d. To accommodate launching a private residential property owner's boat.
  - e. To construct a boat slip provided no individual Department of the Army permit is required for attendant structures or work.
  - f. To maintain safe navigation within or adjacent to commercial marinas or boat storage areas.
3. The dredging activity is limited to a maximum of 200 cubic yards below the Ordinary High Water (OHW) elevation.
4. That at a particular site, only two separate dredging operations may be performed within one year from the date authorization is received from the Corps of Engineers. Total removal from all dredging operations shall not exceed 200 cubic yards. Maintenance dredging, if needed, must be in conformance with the Nationwide Permits contained in Title 33 of the Code of Federal Regulations Part 330.
5. The use of explosives, if necessary, can be utilized to accomplish the dredging.

- a. The blaster shall plan blasting to keep the total weight of explosive charge per shot and the number of shots to the minimum needed to accomplish the work.
  - b. Angular stemming material of sufficient length shall be placed in drill holes to reduce energy dispersal to the aquatic environment.
  - c. Blasting shall be restricted to dates that will preclude the adverse impacts to indigenous fish species. These dates shall be obtained from the District Engineer and/or the appropriate New York State Department of Environmental Conservation regional office.
6. This permit does not authorize the re-routing of natural streams or rivers or the creation of an inlet between two bodies of water separated by a barrier beach or some other land mass above the water surface.
  7. All dredged material shall be deposited on upland property well removed from waters of the United States, including wetlands, and shall be properly stabilized to prevent re-entry into these waters. If the dredged material is temporarily stored on upland property, adjacent to the dredge site, it shall be contained by a filter fabric or hay bale fence to prevent erosion. In certain areas the District Engineer may require dredged clean sand, gravel or cobble to be returned to the waterway or adjacent beach area.
  8. That under no circumstances shall dredged material be sidecast or temporarily stockpiled in waters of the United States, including wetlands.
  9. This permit does not authorize the placement of structures or the discharge of dredged or fill material below the Ordinary High Water elevation of a waterway for the purpose of creating temporary cofferdams, work pads or access roads.
  10. For activities and structures located in New York State Significant Coastal Fish and Wildlife Habitats or an area covered by an approved Local Waterfront Revitalization Program, you must furnish the New York State Department of State with a certification statement that your action is consistent with the State's Coastal Management Plan. Activities and/or structures located in these Significant Habitats are approved by this regional permit only when you obtain an individual consistency certification concurrence for your project from the New York State Department of State. No work shall be started under this permit until the concurrence has been secured or the State has failed to act on the consistency certification within six months and the certification is presumed. You must comply with all conditions of your individual Coastal certification concurrence. In addition, you must furnish the District Engineer, Buffalo District, with a copy of the CZM certification concurrence letter or a **dated** copy of the consistency certification that you provided to the New York State Department of State.

Consistency statements should be forwarded to:

New York State Department of State

Division of Coastal Resources  
41 State Street, 8th Floor  
Albany, New York 12231-0001  
Telephone (518) 474-6000

11. The District Engineer reserves the right to include any additional special conditions or require an individual permit on a case by case basis as deemed necessary to protect the aquatic environment or the needs and welfare of the general public.

12. **Notification** is required to this office for activities located within sensitive areas. The notification is required for these waterways due to the need for site specific reviews for the protection of Federally threatened or endangered species. The Buffalo District will give the U.S. Fish and Wildlife Service a five day review period related to this matter. **Applicants shall not commence work in these waterways** under this permit until the notification process is completed and the applicant receives written verification that the work may proceed. **A list of these areas is attached.**

#### EXCLUSIONS:

This permit does not apply to:

1. Areas where the dredged material is known or suspected to be heavily contaminated with toxic organic compounds and/or heavy metals.
2. Sites within the permit area that are located on barrier beaches or when it is determined by the District Engineer that the work would adversely impact a barrier beach.
3. Dredging activities identified by the District Engineer that may significantly impair the movement of littoral material or alter the bed loading characteristics of streams or rivers.
4. Activities that have an effect on historic, cultural or archaeological sites identified in the latest published version of the National Register of Historic Places, or sites eligible for inclusion in this register, unless the State Historic Preservation Officer makes a determination that the effect will not be adverse.
5. Activities that have an effect on sites included in the latest published version of the National Register of Historic Landmarks, which are published periodically in this register, unless the State Historic Preservation Officer makes a determination that the effect will not be adverse.
6. Any other areas named in Acts of Congress or Presidential Proclamations as National Wilderness Areas, National Recreational Areas, Lakeshores, Parks, Monuments and such areas as may be established under Federal Law for similar and related purposes, such as estuaries and marine sanctuaries, except where specifically authorized by this regional permit.
7. Activities that have an effect on a component of the National Wild and Scenic Rivers System, or areas listed in the Nationwide Rivers Inventory, Final List of Rivers for New York as

published by the U.S. Department of the Interior, or in a component of a State Wild and Scenic River. Activities located in these areas will be evaluated on a case by case basis, which will include coordination with the National Park Service and/or the New York State Department of Environmental Conservation.

8. Activities that have an effect on rivers currently being studied at the direction of Congress as potential additions to the National Wild and Scenic Rivers System, or rivers for which Wild and Scenic Rivers studies have been completed and forwarded to Congress and which Congress is still considering. Activities located in these areas will be evaluated on a case by case basis, which will include coordination with the National Park Service.

9. State designated freshwater wetlands, significant fish and wildlife habitats including candidate designations, important agricultural lands and those which will be designated by the State in the future, historic resources on the State Register of Historic Places and resources which are a part of the State Nature and Historic Preserve Trust, when these resources lie within the designated New York State Coastal Area.

10. Any freshwater wetland as defined in Department of the Army permit regulations at Title 33 of the Code of Federal Regulations, Parts 320 et. seq.

11. Special aquatic sites as defined in the U.S. Environmental Protection Agency Guidelines for Specification of Disposal Sites for Dredged or Fill Material at Title 40 of the Code of Federal Regulations, Part 230, when the specific site area is a vegetated shallow, pool and riffle complex area or mud flat area that the State has specifically designated as an important fish spawning or nursery area or significant fish and wildlife habitat, or is designated as such in the future, or the District Engineer has determined to be an ecologically sensitive site.

12. Activities that may jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended.

Note: Limitations in items 4 through 12 above do not apply to any dredging when the work is for the benefit and uses of the site and is specifically endorsed, in writing, by the responsible Federal and State government officials such as the State Historic Preservation Officer, Refuge Manager, Regional Directors of U.S. Department of the Interior Offices such as the National Park Service and the U.S. Fish and Wildlife Service, etc.

13. Activities performed or proposed, unless the property owner has submitted a written request for authorization describing the activity, and the District Engineer has determined that it complies with the terms and conditions of this permit.

#### LIMITS OF THIS AUTHORIZATION

1. The granting of this permit does not obviate the need to obtain other Federal, State or

local authorizations as required by law. Specifically, a permit pursuant to the Environmental Conservation Law Articles 15, 24 or 34 may be required from the New York State Department of Environmental Conservation.

2. Issuance of this permit does not grant you any property rights or exclusive privileges, nor does it authorize any injury to the property or rights of others.
3. This permit does not authorize interference with any existing or proposed Federal project, nor does it convey any authority to interfere with the right of the public to free navigation on all navigable waters of the United States.

LIMITS OF FEDERAL LIABILITY: In issuing this permit, the Federal Government does not assume any liability for the following:

1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
2. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
3. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
4. Design or construction deficiencies associated with the permitted work.
5. Damages associated with any future modification, suspension, or revocation of this permit.

RELIANCE ON APPLICANT'S DATA: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

RE-EVALUATION OF THE DECISION TO GRANT A REGIONAL PERMIT: This office may re-evaluate its decision on this permit at any time circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

1. You fail to comply with the terms and conditions of this permit.
2. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate.
3. Significant information surfaces which this office did not consider in reaching the original public interest decision.

Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in Title 33 of the Code of Federal

Regulations Part 325.7 or enforcement procedures such as those contained in Title 33 of the Code of Federal Regulations Parts 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may, in certain situations (such as those specified in Title 33 of the Code of Federal Regulations Part 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

EXTENSIONS: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a re-evaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit. Extension requests must be submitted in accordance with the directions given in General Condition 1.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Copy of Signed Original Available on Request

District Engineer

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Date

When the property associated with the work authorized by this permit is sold or transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

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Transferee

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Date



**Table 2. Locations of Federally-Listed Threatened and Endangered Species that may be affected by the proposed GP 81-000-1 (Minor Recreational Dredging) within the Jurisdiction of the Buffalo District.**

County	Townships/Watershed	Species	Avoidance Action <sup>1</sup>
Cayuga	Conquest, Cato	Bald Eagle	1
Cattaraugus	Perrysburg, Cattaraugus Indian Reservation, Elko, Salamanca, Allegheny	Bald Eagle	1
	HUCs 05010001 and 05010002	Clubshell, Northern Riffleshell	1
Chautauq	Chautauqua, Westfield, Ripley, Hanover	Bald Eagle	1
	HUCs 05010001, 05010002, and 05010004	Clubshell, Northern Riffleshell	1
Erie	Cattaraugus Indian Reservation	Bald Eagle	1
Genesee	Alabama	Bald Eagle	1
	Bergen, Byron	Bog Turtle, Houghton's Goldenrod	1
Jefferson	Orleans, Brownville	Bald Eagle	1
	Brownville, Watertown, Hounfield	Indiana Bat	2
	Henderson, Ellisburg	Piping Plover	1
Livingston	Springwater, Conesus	Bald Eagle	1
Onondaga	Cicero	Bog Turtle	1
	Pompey, Fabius	Prairie Fringed Orchid, Indiana Bat	1, 2
	Dewitt	Indiana Bat	2
	Manlius, Lafayette, Onondaga	Indiana Bat	2
Ontario	Canadice, South Bristol	Bald Eagle	1
Oswego	Amboy, Richmond, Oswego	Bog Turtle	1
	Sandy Creek, Richland	Piping Plover	1
	Redfield	Bald Eagle	1
St. Lawrence	Parishville, Hammond	Bald Eagle	1
Schuyler	Dix	Leedy's Roseroot	1
Seneca	Tyre	Bald Eagle	1
	Junius	Bog Turtle	1
Wayne	Arcadia	Bog Turtle, Prairie Fringed Orchid	1
	Savannah	Bald Eagle	1
Yates	Starkey	Leedy's Roseroot	1
	Middlesex, Italy	Bald Eagle	1

<sup>1</sup> Avoidance Action Codes: 1) The Corps must give the Service 5 days notice to review project and provide comments. 2) The Corps must give the Service 5 days notice to review any project that includes tree removal between April 1 and November 1.

# Sample Document